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10/540,703	06/24/2005	Erwin Rinaldo Meinders	NL 021362	2405

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EXAMINER	
JACKSON, STEVEN L	
ART UNIT	PAPER NUMBER
4134	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/540,703	MEINDERS ET AL.	
	Examiner	Art Unit	
	STEVEN L. JACKSON	4134	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 June 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 June 2005* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to because Figure 2 is not correctly labeled. All boxes should either explicitly depict the component which they are representing or should be labeled according to their function. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Figures 1a – 1c should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid

abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because sections of the specification are not appropriately labeled or not labeled at all. Correction is required. See MPEP § 608.01(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

(a) TITLE OF THE INVENTION.
(b) CROSS-REFERENCE TO RELATED APPLICATIONS.
(c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
(d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
(e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
(f) BACKGROUND OF THE INVENTION.
    (1) Field of the Invention.
    (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
(g) BRIEF SUMMARY OF THE INVENTION.
(h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
(i) DETAILED DESCRIPTION OF THE INVENTION.
(j) CLAIM OR CLAIMS (commencing on a separate sheet).
(k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
(l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a

nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1, 2, and 5 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of U.S. Application 10/549,641. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both claim a record carrier comprising a wobbling pregroove with pregroove modulation which is detectable during scanning by further variations of an irradiated beam used for scanning the marks encoding data on the record carrier; where, the pregroove modulation is constituted by variations of the depth or width of the pregroove resulting in varying reflection levels of the irradiating beam.

For example:

10/540,703 claim 1	10/549,641 claim 1
Record carrier of a writable type for recording information by writing marks in a track, the marks being detectable during scanning the track via a beam of radiation by a first type of variations of the radiation, the record carrier comprising	Record carrier of a writable type for recording information by writing marks in a track on a recordable area of a recording layer via a beam of radiation entering through an entrance face of the record carrier, the marks being detectable during scanning the track via the beam by a first type of variations of the radiation, the record carrier comprising
a pregroove indicating the position of the track, the pregroove exhibiting a wobble constituted by displacements of the pregroove in a direction transverse to the longitudinal direction of the track	a pregroove indicating the position of the track, the pregroove exhibiting a wobble constituted by displacements of the pregroove in a direction transverse to the longitudinal direction of the track
the pregroove exhibiting a pregroove modulation constituted by variations of a physical parameter related to the shape of the pregroove	the pregroove exhibiting a pregroove modulation constituted by variations of a physical parameter related to the shape of the pregroove

the wobble being detectable during said scanning by a second type of variations of the radiation, and the pregroove modulation being detectable during said scanning by further variations of said first type	the wobble modulation being detectable during said scanning by a second type of variations of the radiation and the pregroove modulation being detectable during said scanning by further variations of said first type

It would have been obvious to record marks in a track on a recordable area of a recording layer via a beam of radiation entering through an entrance face of the record carrier since this is typically how recording information to an optical disk (floppy or hard disk) occurs.

Claims 3 – 4 and 6 - 7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-14 of copending Application No. 10/549,641 in view of applicant's admitted prior art and in further view of US PG Pub 2002/0031064 A1 to *Oostveen et al*.

As to claim 3, the copending application fails to disclose that the first type of variations due to the marks are substantially in a first frequency range, whereas the first type of variations due to the pregroove modulation are substantially in a different frequency range.

Oostveen et al teaches that the first type of variations (intensity of reflection) due to the marks are substantially in a first frequency range, whereas the first type of

variations (intensity of reflection) due to the pregroove modulation (intensity modulation) are substantially in a different frequency range. Refer to ¶0036 of *Oostveen et al*.

Oostveen et al, applicant's admitted prior art, and the copending application are analogous art because they are in the same of field of endeavor with respect to recording content.

It would have been obvious to have modified the copending application with the teaching of *Oostveen et al*, so that the first type of variations due to the marks could easily be distinguished from the first type of variations due to the pregroove modulation during demodulation.

As to claim 4, the copending application fails to disclose that the second type of variations due to the wobble are substantially in a wobble frequency range and the first type of variations due to the pregroove modulation are substantially in a different frequency range.

Oostveen et al teaches the second type of variations due to the wobble are substantially in a wobble frequency range and the first type of variations (intensity of reflection) due to the pregroove modulation (intensity modulation) are substantially in a different frequency range. Refer to ¶0036 of *Oostveen et al*. In particular, the frequency range of the intensity modulation is only coupled to the frequency range of the information marks (in other words, not directly coupled to the wobble frequency range); therefore, the relationship between the wobble frequency range and the intensity modulation frequency range is a mere design matter which could be

appropriately selected by one skilled in the art. It is further a design matter when considering the wobble modulation is detected by a second variation of the radiation.

Oostveen et al, applicant's admitted prior art, and the copending application are analogous art because they are in the same of field of endeavor with respect to recording content.

It would have been obvious to have modified the copending application with the teaching of *Oostveen et al*, so that the second type of variations due to the wobble could easily be distinguished from the first type of variations due to the pregroove modulation during demodulation.

As to claim 6, the copending application fails to disclose pregroove modulation representing control information for controlling recovery of the information.

Oostveen et al teaches pregroove modulation (intensity modulation) representing control information (anti-piracy information) for controlling recovery of the information. Refer to ¶0001 of *Oostveen et al*. Applicant defines control information to include anti-piracy information in ¶0032.

Oostveen et al, applicant's admitted prior art, and the copending application are analogous art because they are in the same of field of endeavor with respect to recording content.

It would have been obvious to have modified the copending application with the teaching of *Oostveen et al*, so information on the record carrier is protected against piracy.

As to claim 7, the copending application fails to disclose pregroove modulation (intensity modulation) representing program information, in particular access information (encryption key or scramble method) for accessing information to be recorded by the marks. .

Oostveen et al teaches pregroove modulation (intensity modulation) representing program information, in particular access information (encryption key or scramble method) for accessing information to be recorded by the marks. Refer to ¶0017 and ¶0018 of *Oostveen et al*.

Oostveen et al, applicant's admitted prior art, and the copending application are analogous art because they are in the same of field of endeavor with respect to recording content.

It would have been obvious to have modified the copending application with the teaching of *Oostveen et al*, so a record player would know how to read the data on the record carrier by first reading program information permanently stored on the record carrier.

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 1 - 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PG Pub 2002/0031064 A1 to *Oostveen et al* in view of applicant's admitted prior art.

As to claim 1, *Oostveen et al* discloses a record carrier (1; Figure 1) of a writable type for recording information by writing marks (3 information marks; Figure 1c) in a track (11; Figure 3), the marks being detectable during scanning the track (11; Figure 3) via a beam of radiation by a first type of variations (first variation) of the radiation. Refer to Abstract. *Oostveen et al* further discloses a record carrier which comprises a pregroove (information marks) exhibiting a pregroove modulation (intensity modulation) constituted by variations of a physical parameter (width) related to the shape of the pregroove (information marks) and the pregroove modulation (intensity modulation) is detectable during said scanning by further variations of said first type (intensity of beam). Refer to Figure 1c; ¶0036. In particular, the invention as disclosed in *Oostveen et al* modulates the information marks to be recorded within the track of the record carrier by varying the width of the information marks. When the information marks are scanned by a beam, the intensity of the returned beam varies in accordance with the width of the information mark. *Oostveen et al* also discloses a method of track modulation by which the depth of the track varies. In this case, when information marks are scanned by a beam, the returned beam will contain a focal offset which is detected as a focus error. The focus error signal can then be demodulated to extract the embedded information. Refer to Figure 1d; ¶0037.

Oostveen et al does not expressly disclose a record carrier with a pregroove indicating the position of the track which exhibits a wobble constituted by displacements

of the pregroove in a direction transverse to the longitudinal direction of the track and the wobble being detectable during said scanning by a second type of variations of the radiation.

Applicant's admitted prior art teaches a record carrier which comprises a pregroove indicating the position of the track, the pregroove exhibiting a wobble constituted by displacements of the pregroove in a direction transverse to the longitudinal direction of the track, and the wobble is detectable during said scanning by a second type of variations of the radiation. Refer to Figures 1a – 1d, ¶0025 and ¶0026.

Oostveen et al and applicant's admitted prior art are analogous art because they are in the same field of endeavor with respect to a record carrier and an apparatus for reproducing content from the record carrier.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use the modulation techniques disclosed in *Oostveen et al* as a method of modulating the pregroove of a record carrier. The motivation/suggestion would have been to increase the recording density of the record carrier by allowing information to be stored in areas other than the track of the record carrier. The track and pregroove are similar enough in design and function to allow certain characteristics of one to be imposed on the other.

As to claim 2, *Oostveen et al* as modified further discloses a record carrier as recited in the parent claim; wherein, the first type of variations are variations of a reflection level of the track for the radiation. Refer to ¶0036.

As to claim 3, *Oostveen et al* as modified further discloses a record carrier as recited in the parent claim; wherein, the first type of variations (intensity of reflection) due to the marks are substantially in a first frequency range, whereas the first type of variations (intensity of reflection) due to the pregroove modulation (intensity modulation) are substantially in a different frequency range. Refer to ¶0036.

As to claim 4, *Oostveen et al* as modified further discloses a record carrier as recited in the parent claim; wherein, said second type of variations due to the wobble are substantially in a wobble frequency range and the first type of variations (intensity of reflection) due to the pregroove modulation (intensity modulation) are substantially in a different frequency range. Refer to ¶0036. In particular, the frequency range of the intensity modulation is only coupled to the frequency range of the information marks (in other words, not directly coupled to the wobble frequency range); therefore, the relationship between the wobble frequency range and the intensity modulation frequency range is a mere design matter which could be appropriately selected by one skilled in the art. It is further a design matter when considering the wobble modulation is detected by a second variation of the radiation.

As to claim 5, *Oostveen et al* as modified further discloses a record carrier as recited in the parent claim; wherein, the variations of the physical parameter is related to the shape of the pregroove (width of the information mark) constituted by variations of the width of the pregroove (information mark). Refer to Figure 1c; ¶0036.

As to claim 6, *Oostveen et al* as modified further discloses a record carrier as recited in the parent claim; wherein, the pregroove modulation (intensity modulation) is

representing control information (anti-pricy information) for controlling recovery of the information. Refer to ¶0001. Applicant defines control information to include anti-piracy information in ¶0032.

As to claim 7, *Oostveen et al* as modified further discloses a record carrier as recited in the parent claim; wherein, the pregroove modulation (intensity modulation) is representing program information, in particular access information (encryption key or scramble method) for accessing information to be recorded by the marks. Refer to ¶0017 and ¶0018.

8. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PG Pub 2002/0031064 A1 to *Oostveen et al* in view of US Patent # 4,901,300 to *Van Der Zande et al*.

As to claim 8, *Oostveen et al* further discloses a device (20; Figure 3) for scanning a track (11; Figure 3) on a record carrier(1; Figure 3) via a beam of radiation which comprises a head (transducer unit) for providing the beam (¶0006), a front-end unit (second recovery unit) for generating a main scanning signal for detecting marks in the track and the pregroove modulation (intensity modulation) during said scanning by a first type of variations of the radiation (¶0006 - ¶0008; ¶0038 - ¶0041), and a pregroove demodulation unit (detection unit) for retrieving additional information encoded in the pregroove modulation (intensity modulation) from the main scanning signal (Figure 2; ¶0043).

Oostveen et al does not expressly disclose a front-end unit for generating an auxiliary scanning signal for detecting the wobble during said scanning by a second type of variation of the radiation.

Van Der Zande et al discloses an apparatus with a means for detecting the wobble (track modulation) during said scanning by a second type of variation of the radiation (claim 7).

Oostveen et al and *Van Der Zande et al* are analogous art because they are in the same field of endeavor with respect to reproducing content from a record carrier.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to use a playback apparatus as disclosed in *Oostveen et al* with a unit for detecting the pregroove wobble by means of a variation of the radiation. The motivation/suggestion would have been to provide faster access to information by allowing the playback apparatus to read address information from the wobbling pregroove.

As to claim 9, *Oostveen et al* further discloses an apparatus as recited in the parent claim; wherein, the pregroove demodulation unit (detection unit) comprises a filter unit (80 band pass filter) for filtering a frequency range from the main scanning signal, said frequency range being set for filtering said first type of variations due to the pregroove modulation. Refer to Figure 2; ¶0043.

9. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US PG Pub 2002/0031064 A1 to *Oostveen et al* in view of in view of applicant's admitted prior art and US Patent # 4,789,863 to *Bush*.

As to claim 10, *Oostveen et al* as modified discloses a record carrier as recited in the parent claim.

Oostveen et al does not expressly disclose a method of providing information to a user which comprises providing information for recording.

Bush discloses a method of providing information to a user which comprises providing information (prerecorded entertainment) for recording. Refer to the Abstract. In particular, the user selects prerecorded entertainment from a remote database to be recorded on a special receiver which allows the user to listen to the music.

Oostveen et al, applicant's admitted prior art, and *Bush* are analogous art because they are in the same of field of endeavor with respect to recording content.

At the time of the invention, it would have been obvious to one of skill in the art to use a record carrier as disclosed in *Oostveen et al* to record prerecorded entertainment. The suggestion/motivation would have been to allow the user to select information from a database which would be recorded onto a record carrier.

As to claim 11, *Oostveen et al* as modified discloses a record carrier and method of providing information as recited in the parent claims.

Oostveen et al does not expressly disclose a method of providing information to a user wherein the user is provided with samples (previews) of content and full versions of said samples are available to the user via a network (cable network).

Bush discloses a method of providing information to a user wherein the user is provided with samples (previews) of content and full versions of said samples are available to the user via a network (cable network). Refer to the Abstract.

Oostveen et al, applicant's admitted prior art, and *Bush* are analogous art because they are in the same of field of endeavor with respect to recording content.

At the time of the invention, it would have been obvious to one of skill in the art to use a record carrier as disclosed in *Oostveen et al* to record prerecorded entertainment via a network which the user has selected after listening to previews of the entertainment; the previews being prerecorded on the record carrier. The suggestion/motivation would have been to allow the user to select information from a database which would be recorded onto a record carrier.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEVEN L. JACKSON whose telephone number is (571) 270-7364. The examiner can normally be reached on Monday through Thursday, 8:00 AM until 5:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lun-Yi Lao can be reached on (571) 272-7671. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions about accessing the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/STEVEN L JACKSON/
Examiner, Art Unit 4134

/LUN-YI LAO/
Supervisory Patent Examiner, Art Unit 4134